

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 475 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be
 1 allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
 3 fair copy of the judgment ?

4 Whether this case involves a substantial
 4 question of law as to the interpretation
 of the constitution of India, 1950 or any
 order made thereunder ?

5 Whether it is to be circulated to the
 5 civil judge ?

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MAGANBHAI REVABHAI
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :

MR ASHISH M DAGLI for the Petitioner
 MR AJ DESAI, ADDITIONAL PUBLIC PROSECUTOR for Respondent No.1
 MS KRISHNA U MISHRA for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 19/09/2006

ORAL JUDGMENT

1. **RULE.** Mr.A.J.Desai, learned Additional Public
 Prosecutor waives service of Rule on behalf of respondent
 No.1. Learned advocate Ms.Krishna U.Mishra waives
 service of Rule on behalf of respondent No.2.

2. Mr.Ashish M.Dagli, learned advocate for the petitioner submitted that in Criminal Case No.531 of 1999, the petitioner - original accused No.2 is convicted for an offence punishable under Section 324 of the Indian Penal Code and is awarded sentence of one year S.I., fine of Rs.3,000/- and in default, three months S.I. by the learned Judicial Magistrate First Class, Dhangadhra.

The learned Judicial Magistrate First Class is also pleased to order that on payment of the aforesaid fine of Rs.3,000/-, an amount of Rs.2,000/- be paid to the complainant - Bhalabhai Dhanabhai under Section 357(3) of the Criminal Procedure Code. Other accused, i.e. Nos.1, 3 and 4 were acquitted from the charge levelled against them for the offence punishable under Sections 323, 324 and 504 of the Indian Penal Code and Section 135 of the Bombay Police Act whereas, the present petitioner - original accused No.2 was acquitted of the offence punishable under Sections 323 and 504 of the Indian Penal Code and Section 135 of the Bombay Police Act.

3. The present petitioner - original accused No.2 had filed Criminal Appeal No.4 of 2005 before the learned Additional Sessions Judge, Dhangadhra. The learned Additional Sessions Judge, Dhangadhra by judgment and order dated 10.07.2006 is pleased to dismiss the appeal so far as conviction is concerned, however, is pleased to

reduce the sentence, i.e. imprisonment from one year S.I. to six months S.I. and imprisonment of three months S.I. in case of non-payment of fine is reduced to one and half month. The learned Additional Sessions Judge was pleased to uphold the order passed by the learned Judicial Magistrate First Class under Section 357(3) of the Criminal Procedure Code.

Mr.Dagli, learned advocate for the petitioner submitted that since 10.07.2006, the day on which the learned Additional Sessions Judge was pleased to dismiss the appeal against the conviction, the petitioner is in jail.

4. Mr.Dagli submitted that in view of the provisions of Section 360 of the Criminal Procedure Code and Section 4 of Probation of Offenders Act, 1958, the petitioner be granted the benefit of being released on 'probation of good conduct'. The learned advocate for the petitioner invited attention to paragraph No.13 of the judgment of the learned Judicial Magistrate First Class. There, the 'reasons' are set out for which the learned Judicial Magistrate First Class awarded sentence of one year S.I. and not more. He submitted that only because the benefit of Section 360 of the Criminal Procedure Code was not prayed for, the learned Judge has not considered it fit to grant the same. He submitted that taking into consideration the fact that there were convincing reasons

for which the learned Judicial Magistrate First Class was pleased to award lesser sentence, for those very reasons, the learned Judicial Magistrate First Class ought to have extended the benefits flowing from Section 360 of the Criminal Procedure Code and Section 4 of the Probation of Offenders Act.

5. Learned advocate Mr.Dagli for the petitioner relied upon a decision of the Hon'ble the Apex Court in the matter of **KULDIP SINGH AND ANOTHER VS. STATE OF PUNJAB**, reported in 1994 CRI.L.J. 2201. He submitted that taking into consideration the facts of the present case, which are similar to an extent to the case before the Hon'ble the Apex Court, benefit of probation of good conduct may be granted. In this regard, he invited attention of the Court to following observations made by the Hon'ble the Apex Court:

"..... but having regard to the circumstances, namely, (i) he dealt only one blow on the shoulder which is only simple injury and (ii) in view of the fact that he also received injury, we think that it is not a fit case where he should be awarded sentence. He appears to be the first offender and, therefore, we release him on probation as provided under S. 4 of the Probation of Offenders Act and direct him to execute a bond of Rs.2,000/- to the satisfaction of the trial Court in accordance with the provisions of S. 4 of the Probation of Offenders Act. Subject to the above modification, the appeal is disposed of. The sentences awarded in

respect of Kuldip Singh shall run concurrently."

Learned advocate for the petitioner submitted that the case of the prosecution is set out in paragraph No.1 of the judgment of the learned Judicial Magistrate First Class. He submitted that the fact that (i) the complainant and the accused belong to the same community, (ii) that they are neighbours, (iii) that after the incident in question which took place on 29.04.1999, till date, no untoward incident is reported against the accused, (iv) not only that, there is nothing on record to show that the parties have any strain relations since then. He submitted that now after so many years of peaceful co-existence, if the accused - the petitioner is made to undergo the sentence, will cause heart burning. He submitted that even the family circumstances of the petitioner are such which warrant that the benefit of Probation of Offenders Act be given to him.

6. Taking into consideration the submissions made by the learned advocate for the petitioner, it is deemed fit that the benefit of Probation of Offenders Act is granted.

7. The petitioner - accused is directed to execute a bond of Rs.5,000/- (Rupees Five Thousand Only) to the satisfaction of the trial Court in accordance with the provisions of Section 4 of the Probation of Offenders Act. He is ordered to be released on probation on his

executing the aforesaid bond. Revision Application is allowed. Rule is made absolute. Direct service is permitted.

(RAVI R.TRIPATHI, J.)

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